



State of Washington
DEPARTMENT OF ECOLOGY
4601 N Monroe Street
Spokane, WA 99205-1295

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NSN
MR PETER VULTEE
4049 INCHELIUM
KETTLE FALLS WA 99141

99205129599 0003





STATE OF WASHINGTON
DEPARTMENT OF
4601 N Monroe Street • Spokane, Wash

August 6, 2013

Mr. Peter Vultee
4049 Inchelium
Kettle Falls WA 99141

Re: Water Right Application No. S3-29349

Dear Mr. Vultee:

On July 16, 2013, this office mailed a certified letter notifying you that your Water Application Number S3-29349 would be rejected unless you directed us to withdraw the application or proceed to a formal decision. The letter was returned undeliverable. The Ferry County Assessor records confirm the property was sold in 2003 and you no longer own the property. No forwarding address was received.

Therefore your application is hereby **rejected**.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do the following within 30 days of the date of receipt of this document:

- File your appeal and a copy of this document with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

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Sent To	
Street, Apt. No., or PO Box No.	MR PETER VULTEE 4049 INCHELIUM
City, State, ZIP+4	KETTLE FALLS WA 99141

PS Form 3800, August 2006

See Reverse for Instructions

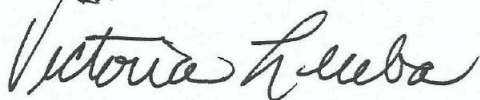


Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov> . To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

If you have any questions, please contact Kevin Brown at (509)329-3422.

Sincerely,



For Keith L. Stoffel
Section Manager
Water Resources Program

KLS:KB:ka

Enclosure: *Your Right to Be Heard*

By Certified Mail 7011 3500 0001 8626 3603



Map based on Application for a Water Right Permit received 12/11/1992



- County
- WRIA
- Township / Range
- Section

- ▲ Existing Point of Diversion
- ▲ Proposed Point of Diversion
- Proposed Place of Use

SOURCE POSITION CODES

- P - Proposed
- U - Unchecked
- X - Centroid
- A - All Right (Ft Distance, Map)
- G - GPS
- W - Well Report

Comments:
POU delineates section 5 of application.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

AFF. EXP.
3-27-93

REPORT OF EXAMINATION
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

- ☒ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- ☐ Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE December 11, 1992	APPLICATION NUMBER S329349	PERMIT NUMBER	CERTIFICATE NUMBER
NAME Peter G. Vultee			
ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
N. 7012 Cotton # G107 - Spokane, WA 99208			
4049 Inchelium-Kettle Falls Road 99141 Kettle Falls, WA			
PUBLIC WATERS TO BE APPROPRIATED			
SOURCE Lake Roosevelt (Columbia River)			
TRIBUTARY OF (IF SURFACE WATERS) Pacific Ocean			
MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR	
QUANTITY, TYPE OF USE, PERIOD OF USE			
LOCATION OF DIVERSION/WITHDRAWAL			
APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL			
LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION 16	TOWNSHIP N. 35	RANGE, (E. OR W.) W.M. 37 E. 58
W.R.I.A. COUNTY FE.			
RECORDED PLATTED PROPERTY			
LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)	
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED			

Fish & hold - no point in doing investigations
JMS.
8-6-93

CCR - 5/6/13 - No Mitigation

Check Prior Rights
IS9 - NEEDED
R.O.W.

Lot 1 - Marney Shad Flat

Ferry Cnty -
above - Gilson Trust / D. Jan/Wiley Gilson
Vultee - Solo - 03 - to Gilson

4061 Inchelium Hwy
Kettle Falls - WA
99141

Columbia Hold

KB 8/5/13 -
Requet.

REPORT

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
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DESCRIPTION OF PROPOSED WORKS

ECOLOGY

295



02 1M

\$ 00.46⁰

0004285354

JUL 16 2013

MAILED FROM ZIP CODE 99205

MR. PETER VULTEE
4049 INCHELIUM KETTLE FALLS ROAD
KETTLE FALLS WA 99141

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

July 16, 2013

Mr. Peter Vultee
4049 Inchelium Kettle Falls Road
Kettle Falls, WA 99141

Re: Water Right Application No. S3-29349

Dear Mr. Vultee:

You filed Water Right Application No. S3-29349 in December of 1992 requesting authorization to divert 0.25 cfs from the Columbia River for the irrigation of five acres. The application is still pending in the Eastern Regional Office of the Department of Ecology.


We are currently working on water right applications in the Upper Lake Roosevelt (WRIA 58) and are contacting applicants to determine their continued interest in pursuing a water right, updating contact information and evaluating water availability based on purpose of use requested. Water for agricultural irrigation purposes is still not available from the Columbia River.

In addition, the Department of Ecology's Office of Columbia River (OCR) is currently processing new water right applications under the Lake Roosevelt Incremental Storage Releases Program (Program). Water allocated under the Program is required to be used for municipal water supply and/or industrial purposes only.

While your application includes irrigation as a purpose of use, it is generally not included in the purposes under the Program. It was determined that should the irrigation not be for agricultural purposes, the non-agricultural irrigation could be included in the program. We have water available for non-agricultural irrigation for lawns and gardens. For further details on costs of water associated with the Program, please give me a call at (509) 329-3422.

Should you decide not to pursue this application, the exempt well provision in RCW 90.44.050 allows for up to five thousand gallons per day for domestic uses, one-half acre of non-commercial lawn and garden, and up to 5000 gallons per day for industrial uses, including agricultural irrigation.. This may be adequate to serve your proposal without the need of an application..

While your application may be processed under this Program, it will depend on the type of irrigation you propose. If you want to proceed with the application, please contact me to discuss alternatives. If you do not wish to proceed or have other questions, please call me at (509) 329-3422 or fill out the Statement of Intent Form and return it.

Sincerely,

Kevin Brown
Water Resources

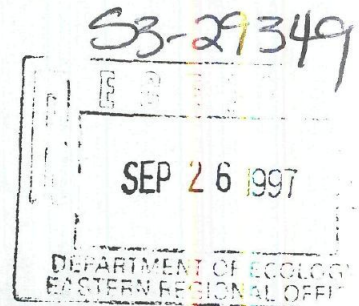
KB:ka
Enclosure: Intent Form





CENTER FOR ENVIRONMENTAL LAW & POLICY

**1165 Eastlake East, Suite 400
Seattle, WA 98109**



Prof. Ralph W. Johnson, President

Rachael Paschal, Director

September 22, 1997

Bruce Howard
Department of Ecology
4601 N. Monroe, Suite 202
Spokane, Washington 98902-3401

Dear Bruce:

Please find enclosed the original and 25 copies of a comment letter from the Center to be filed with each of the applications which are listed in the "cc" of the letter. Do not hesitate to call if you have any questions.

Thank you.

Sincerely,

Betsy Dennis



CENTER FOR ENVIRONMENTAL LAW & POLICY

**1165 Eastlake East, Suite 400
Seattle, WA 98109**

Prof. Ralph W. Johnson, President

Rachael Paschal, Director

September 22, 1997

Bruce Howard
Department of Ecology
4601 N. Monroe, Suite 202
Spokane, Washington 98902-3401

Re: Water Right Applications from the Columbia River

Dear Bruce:

The Center for Environmental Law & Policy respectfully requests that you either deny or continue in hold status all applications for new water rights from the Columbia River, its tributaries and from any ground water source in continuity with them. We agree with statements made by the department at recent public meetings that new instream flows for the Columbia mainstem should be established *before* any new rights are permitted. Habitat conservation measures also must be in place.

Because of their importance to the overall health of the basin, tributaries to the mainstem should also be included in the hold area. If emergency permits are necessary, grants of permits should have three conditions: (1) the permits should be subject to future instream flow requirements; (2) permitted withdrawals should not result in a net reduction in streamflow; (3) permitted withdrawals should not result in any decrease in water quality or increases in water temperature; and (4) specific and quantifiable conservation measures must be in place for all water rights or permits which the emergency applicant may hold before a new permit is granted.

Impacts Under Endangered Species Act

As you undoubtedly know, the Columbia River is the home to several species of salmon which are listed under the federal Endangered Species Act 16 U.S.C. §§1531-1544. On August 11, 1997, the National Marine Fisheries Service

(NMFS) placed the upper Columbia River Steelhead on the endangered species list. Snake River sockeye were listed as endangered in November of 1991. Snake River spring, summer and fall chinook salmon were listed as threatened in early 1992, and subsequently upgraded to endangered in August of 1994. According to Governor Locke, these listings are just the beginning: "In the next year and a half we can expect six more listings by the federal government of salmon and related fish under the Endangered Species Act."¹ At least one of these potential listings, the bull trout, uses the waters of the Columbia Basin.²

These listings have the potential to affect actions taken both by federal and state agencies and by individuals who use the waters of the Columbia River or its tributaries, where these actions are found to have an adverse impact on the listed species or on habitat that is considered to be critical to that species.³ Section 7 of the Endangered Species Act (ESA)⁴ imposes substantive and procedural requirements on federal agencies, making it clear that each federal agency "shall ensure" that any action taken by that agency "is not likely to jeopardize the continued existence of any endangered species" or result in "the destruction or adverse modification" of critical habitat.⁵ Section 7 also triggers a review of actions taken by federal agencies to ensure that they do not jeopardize listed fish.⁶ Additionally, "any person" is prohibited from harming any listed species under section 9 of the ESA subject to the jurisdiction of the United States.⁷ Finally, section 11 of the ESA allows for citizen suits as a means

¹ Seattle Post Intelligencer, August 12, 1997 Article by R. Taylor and R. Zimmerman, "Agency sounds steelhead warning."

² On June 10, 1997, U.S. Fish and Wildlife proposed listing the bull trout as threatened under the ESA.

³ Babbitt v. Sweet Home Chapter of Communities for A Great Oregon, 115 S.Ct 2407 (1995) (Court upheld as reasonable a regulation which included in the meaning of the term harm "significant habitat modification or degradation that actually kills or injures wildlife.")

⁴ 16 U.S.C.A. §1536

⁵ Riverside Irr. Dist. v. Andrews, 758 F.2d 508 (10th Cir.1985) (The Army Corps of Engineers was within its authority in denying a nationwide discharge permit where the developer did not show that habitat would not be adversely affected by discharge.)

⁶ For example: NMFS (National Marine Fisheries Service). May 16, 1997. Endangered Species Act - Section 7 Consultation. Biological Opinion on permit application number 96-697 by the Inland Land, Inc. for construction of a pumping facility on the Columbia River. (Inland Land, Inc. BiOp).

⁷ 16 U.S.C.A. sec.1538(a); United States v. Glenn-Colusa Irrigation Dist., 788 F.Supp.1126 (E.D.Cal.1992) (U.S. action against an irrigation district to enjoin pumping which caused "taking" of salmon killed in fish screens in violation of the ESA upheld).

of enforcing the ESA.⁸ Denial of water permits is one area in which the state may both help the salmon recovery effort and avoid costly litigation simultaneously.

The ESA listings increase federal interest and involvement, both in terms of financial commitments and potentially in terms of direct management of resources in the Columbia River and its tributaries. State and federal governments have invested in ways to get more water in the river using taxpayer, ratepayer, and other sources of money. "In the 1980s and early 1990s, Northwest utilities spent an estimated \$1.3 billion in direct payments and lost power revenues...trying to double remaining fish runs."⁹ In fiscal year 1998, "the direct investment in the [Northwest Power Planning] Council's program is about 143 million/year¹⁰ and flow manipulation to enhance survival of migrating salmon smolts creates an indirect cost due to foregone electrical power generation that may amount to an additional \$150-180 million/year."¹¹

On the legal front, the arena from which hands on management will arrive, the NMFS 1994-1998 Biological Opinion for the Columbia River Power System Operations has recently been upheld by Judge Marsh in the U.S. District court for the district of Oregon.¹² Although Judge Marsh questions the level of risk tolerance in NMFS' Reasonable and Prudent Alternative (RPA), the NMFS 1994-1998 BiOp concludes "that without major modifications to the Snake and Columbia River Dams, it is unlikely survivals can be sufficiently improved to ensure that the operation of the FCRPS does not impede the survival and recovery of the listed Snake River Salmon."¹³ "Generally, the RPA calls for immediate structural improvements and modifications, evaluations, studies, and most critical to this dispute *improved flows* through the Columbia and Snake

8 16 U.S.C.A. §1540(g)(1)(A).

9 W. Dietrich, Northwest Passage: The Great Columbia River 44 (University of Washington Press, Seattle 1995)

10 Independent Scientific Review Panel. July 15, 1997. Review of the Columbia River Basin Fish and Wildlife Program as directed by the 1996 amendment to the Power Act for the Northwest Power Planning Council. ISRP Report 97-1 at page 1.

11 Id.

12 American Rivers et. al. v. NMFS, Civil No. 96-384-MA, (Oregon Dist. Ct.) April 3, 1997.

13 NMFS (National Marine Fisheries Service). March 2, 1995. Reinitiation of Consultation on 1994-1998 Operation of Federal Columbia River Power System and Juvenile Transportation Program in 1995 and Future years at 81. (1994-1998 BiOp); American Rivers et. al. v. NMFS, Civil No. 96-384-MA, (Oregon Dist. Ct.) April 3, 1997 at 11.

rivers through reservoir draw downs and increased spill at projects during critical migration periods."¹⁴ (emphasis added).

A more recent NMFS Biological Opinion addressing the potential construction of a pumping facility on the Columbia River by Inland Lands, Inc.¹⁵ concludes that "the continued increase in water depletions...would degrade the environmental baseline" concluding that "any permit issued be conditioned so that water withdrawals under the permit do not result in a net reduction in streamflow..."¹⁶

In fact, at no small expense, efforts are being made to address streamflow deficiencies. For example, at the request of the U.S. Bureau of Reclamation, the state of Idaho has been providing 427,000 acre-feet of water per year to the U.S. Bureau of Reclamation for downstream, out of state flow augmentation. The Bureau of Reclamation has estimated that in order to provide 427,000 acre-feet per year with 95% reliability, as many as 425,000 acres would have to be taken out of production, causing indirect (non-farm) impacts totaling \$44 million dollars per year. The direct cost to the federal government of acquiring such water is estimated at \$294 million."¹⁷ In addition, the Army Corps of Engineers has estimated that drawing down the four Snake River dams for salmon recovery would cost more than \$500 million.¹⁸ Most recently two of the Bonneville turbines were shut down during a fish salvage operation designed to alter flows in order to encourage fish to use fish ladders with non-damaged gratings. The shut down cost BPA around \$1.2 million dollars during August, 1997.¹⁹

Governor Batt of Idaho has made clear in a letter to the governors of Oregon and Idaho that it is not acceptable to Idaho that their water should be allocated for flow augmentation only to be used in Washington and in Oregon for irrigation.

¹⁴ American Rivers et. al. v. NMFS, Civil No. 96-384-MA, (Oregon Dist. Ct.) April 3, 1997 at 17.

¹⁵ NMFS (National Marine Fisheries Service). May 16, 1997. Endangered Species Act - Section 7 Consultation. Biological Opinion on permit application number 96-697 by the Inland Land, Inc. for construction of a pumping facility on the Columbia River. (Inland Land, Inc. BiOp).

¹⁶ Inland Land, Inc. BiOp. Executive Summary at iii.

¹⁷ Letter from State of Idaho Water District 1, Don Kramer, chairman, Committee of Nine to Oregon Water Resources and Washington Department of Ecology dated 4/23/96.

¹⁸ April 15, 1997 testimony to the Senate Appropriations Subcommittee on Energy and Water Development. From Cleve Steward, Sustainable Fisheries Foundation from information compiled by Gene Buck, Senior Analyst in the Congressional Research Service.

¹⁹ John Taves, information officer for BPA, phone conversation September 18, 1997.

Batt contends that "there is no demonstrated need for additional acreage of land to be developed and cultivated at this time."²⁰

The situation in the Columbia Basin is complex. Water withdrawals from the Columbia River and its tributaries did not alone cause the current salmon crisis and limiting or stopping future withdrawals cannot be expected by itself to "fix" the problem.²¹ However, even though a clear "flow survival relationship adequate for defining flow requirements has yet to be established,"²² it is known that "[s]almonid fishes of all species require cold, clean water for survival and growth, and clean, stable and permeable gravel substrate, usually running water environments, for reproduction."²³ Even without knowing how much flow is needed, a number of reports, studies, and plans issued by the Northwest Power Planning Council (NPPC), Bonneville Power Authority (BPA), Bureau of Reclamation (BOR), Columbia River Intertribal Fish Commission (CRITFC), and National Marine Fisheries Service (NMFS) have identified inadequate instream flows in the mainstem Columbia and Snake Rivers. All have concluded that river management must change to provide more natural instream flow patterns. A definitive federal/state/tribal plan to better manage river flows through a combination of water releases, natural flows, and lowering reservoirs has not been developed. While there may not be agreement on the best management strategies to assure salmon survival, there is agreement that most streams in the region are now fully or over appropriated.²⁴

A recently released interim report by the Bureau of Reclamation under contract to NMFS was designed to assess "the cumulative effects of water withdrawals

²⁰ Letter from Philip Batt, Governor of Idaho, to the Governors of Oregon and Washington dated May 6, 1996.

²¹ See Generally W. Dietrich, Northwest Passage: The Great Columbia River (University of Washington Press, Seattle 1995); The 1994-1998 BiOp at page 4 estimates that approximately 80% of historical salmon losses are attributable to hydropower development and operation.

²² Independent Scientific Group (IGS). 1996. Return to the River: restoration of salmonid fishes in the Columbia River ecosystem. Prepublication Copy, September 10, 1996 at page 247. Available from Northwest Power Planning Council, Portland, Oregon. (Return to the River).

²³ Id. at page 131.

²⁴ See: BLM/Forest Service (Bureau of Land Management). November 1996. Status of the Interior Columbia Basin, Summary of Scientific Findings. General Technical Report PNW-GTR-385 November 1996 at page 101. Also See: BOR (Bureau of Reclamation). March 1997. Cumulative Effects of Water Use: an estimate of the hydraulic impacts of water resource development in the Columbia River Basin. Interim Report, U.S. Bureau of Reclamation, Pacific Northwest Region. (Cumulative Report).

on Columbia Basin flows.”²⁵ The report indicated that “water withdrawals are nearly 40 percent of the average natural river flow in low flow years at the McNary Dam during irrigation season, which coincides with the salmon migration season.”²⁶ Until we know more, it would be imprudent to issue any new rights.

The State of Water Withdrawals

There are at least three areas in which water that is currently adding to instream flows could be allocated out of stream pursuant to the state water code. Columbia River water demand is found in applications for new water rights, in requests to extend dates for perfection of pre-existing water permits, and in the reservation of water at the McNary and John Day pools.

First, according to the Department of Ecology Water Rights Application Tracking system printouts (WRATS)²⁷ at least one hundred and eleven applications for ground and surface water rights are pending in the Columbia mainstem, requesting a total of about 257,490.64²⁸ gallons per minute. This total includes applications for water submitted by the towns of Malaga, Pateros, Pasco, Brewster, Marcus and Tri-Cities. Forty-five percent of the applications are for withdrawals directly from the Columbia River and the remaining 55% are from ground water sources which are in continuity with the Columbia River.

Eighty-one percent of the applications have an irrigation component. The typical irrigation season runs from early April through late October.²⁹ Water withdrawals during this period coincide with instream flow requirements for salmon.³⁰ Taken together these applications would bring into production 63,772.34 acres of land at a time when, according to Governor Batt of Idaho, it

25 Cumulative Report.

26 Inland Land, Inc. BiOp at ii citing Cumulative Report at Appendix B page 2 of 2.

27 Dated June 2, 1997 for the Central Regional Office and July 16, 1997 for the Eastern Regional Office; Tri-Cities information taken from the application itself.

28 Potential surface withdrawals are given in CFS on the WRATS. These amounts were converted to GPM using 1.5 CFS = 700 GPM.

29 NMFS (National Marine Fisheries Service). June 4, 1997. Endangered Species Act - Section 7 Consultation Biological Opinion for Permit No. 95-849 by S&S Farms for construction of a pumping facility on the Snake River at ii (S & S BiOp); Also many permits have the following wording: “To be used for irrigation of [# of acres] from April 1 to October 31 each year.” For example: K2H Permit No. 16571(A).

30 Return to the River at Chapters 6 and 7. Chinook - March to May; Underyearling Chinook - Mid-May to late October; Snake River fall Chinook - peak at Hanford late April to Late May. S and S BiOp at ii (Executive Summary).

is not clear that more agricultural land needs to be brought into production.³¹ The remaining applications are for withdrawals of water on either a year round basis or on an as needed basis for frost and/or heat protection.³² A conservative estimate of the cumulative impacts of these applications would be the withdrawal of 222,814.97 acre feet of water annually.

Second, there are approximately 51 previously granted permits seeking extensions of time to develop existing but unperfected water rights many of which are for industrial agriculture primarily in the Horse Heaven Hills area.³³ While we suspect that DOE will look carefully at whether further extensions will be granted in this area, the Department's past practice of granting numerous extensions requires that the impact of these potential water withdrawals be considered before any new permits are issued. Some 290,192 annual acre feet of water are tied up in these permits, the majority of which involve the John Day and/or McNary pools. While a small percentage of this water may have been put to beneficial use, the lion's share has not been perfected and so is currently contributing to instream flows in the mainstem.

Forty-nine of the permits under consideration for extensions are for irrigation and thus would withdraw water directly from the Columbia River, when flows are most at risk. In addition, because revitalization of alluvial reaches to improve and create salmon friendly habitat may prove to be one of the solutions to the decline in salmon populations, it is important to note that the report by the Independent Scientific Group theorizes that "lowering the McNary pool likely would lower the water table in the alluvial reaches upstream, significantly increasing the size of the river reach at Hanford containing both surface and ground water habitat components."³⁴ This will become more difficult and expensive to accomplish if significant amounts of water are withdrawn for irrigation.

31 Supporting this view are the requests for extensions submitted by AgriNorthwest from 1989 to 1994, the date of the last extension request. These requests specifically state that "Development is proceeding...to the extent economics allow." This company is bringing into production about 1000 acres per year.

32 Ecology has denied permits for frost and heat protection in the Yakima Basin as violative of the public interest when water resources are scarce and potentially over allocated.

33 For example: AgriNorthwest/K2H has permits dating from 1962-1975. These permits are all pre - Family Farm Act and pre - instream flow protections. A December 19, 1995, letter from AgriNorthwest to Ecology states that during the 1997-2002 year period, "we anticipate developing approximately 19,600 additional acres from the McNary pool at an average of 3,000-6,000 acres per year."

34 Return to the River at page 268.

Third, there is water that has been previously reserved by regulation. The Department indicated at its series of public meetings in July of 1997, that the amounts of water reserved under WAC 173-531(A) in 1980 would be subject to any new instream flow requirements that are established. It is critical that this occur as the regulation reserved a significant amount of water from the John Day and McNary pools for irrigation and municipal use which has not yet been put to beneficial use. Of the total 1,320,000 acre-feet per year reserved for irrigation only 10% has been allocated with a potentially smaller percentage actually having been put to beneficial use.³⁵ Of the 26,000 acre-feet per year reserved for municipal use only 50% has been allocated.³⁶ This leaves at least 1,201,000 annual acre-feet of water with a 1980 priority date, reserved but still adding to surface flows because it has not been allocated out of stream.

Should Washington issue new permits and continue to grant extensions, 1,714,007 annual acre-feet could be diverted directly out of the Columbia. Of this amount, 1,491,192 annual acre feet is already permitted or reserved but not yet put to beneficial use. It should be noted that this does not take into account water reserved for the Columbia Basin project.

In addition, while the potential effect of withdrawals on flows and habitat is of primary concern, water withdrawals also have a value in terms of lost hydropower generation per acre foot of water diverted above each dam. Mapping of the locations of the applications, extensions and reservations makes it possible to estimate this loss.³⁷ This total potential cost of lost hydroelectric power is valued at \$12,613,967.³⁸

The 4-part test for a water right

RCW 90.03.290 provides that prior to granting a water right, the department must find that water is available, that the proposed use is beneficial, that existing rights will not be impaired and that the granting of the right is not contrary to the

³⁵ July 29, 1997, phone conversation with Thom Lufkin of DOE.

³⁶ July 30, 1997, phone conversation with Kevin Brown of DOE.

³⁷ Norman Whittlesey, Professor Emeritus, Department of Agricultural Economics, Washington State University, estimates, after consultation with Dick Watson of the NWPPC, that the cost per KWH of electricity in real terms is 25 mills. This figure has been used to calculate the value of hydroelectric power lost for each dam.

³⁸ Value of lost hydropower due to potential application withdrawals - \$1,258,815.54. Value of lost hydropower due to potential extension withdrawals - \$2,204,098.61. Value of lost hydropower due to potential reservation withdrawals - \$8,262,880.

public interest. In this case, the information described above implicates each of the four tests. In particular, it is apparent that water is not available, and that the grant of new water rights will impair both existing rights and the public interest.

- water availability

Water availability considers the physical limitations on the source of supply, which include analysis of both the water balance and ecosystem requirements. While protection of instream flows is a consideration under the public interest prong, availability determinations should be a "big picture" exercise that evaluates the hydrologic cycle and multiple environmental factors that contribute to water availability. To determine physical availability, Ecology at a minimum must collect existing data regarding flows, water quality, fisheries, hydraulically connected ground water and other relevant factors.

An analysis of physical availability must also take into consideration the relationship of tributary rivers to the Columbia, and the ecological status of those tributaries. The Spokane, Kettle, Okanogan, Methow, Entiat, Wenatchee and Yakima Rivers, among others, all contribute significant quantities of water to the Columbia. These rivers each experience low flow problems and most are closed to new, unconditional water rights. A complete assessment of water availability must include an accounting of the water balance in these sub-basins.

A complete analysis of water availability must also consider the contribution of ground water as a source of recharge to the Columbia River. The water code requires that ground and surface waters be managed as an integrated resource and, where an aquifer is functionally related to a river, it is necessary to determine the quantity of water that the aquifer contributes to or captures from the surface water source. It is also appropriate to consider other parameters of ground water discharge, especially its moderating influence on surface water temperatures. This is crucial in a system like the Columbia, where hydropower structures have altered both flow and temperature regimes, to the detriment of fisheries.

- senior water rights

To determine whether new water rights will impair senior rights, Ecology must compile information regarding existing rights and claims. Surface water rights diverting directly from the river are only one part of the equation. This "legal availability" analysis also includes in-river water rights (e.g., for hydroelectric facilities), ground water rights in hydraulically connected aquifers (the basalt aquifers of the Columbia Plateau), and tribal treaty water rights, which are largely unquantified.

In addition, as described above, a number of existing but unperfected water "rights" are entitled to consideration under this analysis. These include large industrial irrigation permits for which the permittees have received multiple extensions for perfection for years or decades, as well as the reservation of water from the John Day and McNary pools. Any unperfected rights should also be subject to new instream flow requirements, however that is not the issue here. Instead, the concern is that these permits and reservations represent water that is currently flowing in-stream, but will be committed to out-of-stream use in the future. As such, they must be considered as a part of the "legal availability" analysis.

Finally, the regulatory instream flows for the Columbia River are a form of water right entitled to standard protections, including the no-impairment test. There has been fairly universal criticism of the existing flows and state officials, including Governor Locke, have indicated that new water rights will not issue until new, scientifically defensible flows have been determined and adopted by rule. If the informational meetings held around the state serve as an example, issues surrounding appropriate flow levels will be extremely contentious. New regulatory reform requirements regarding cost-benefit analysis will complicate the process. While the flow-setting effort will require significant time and resources, it is crucial that this task be accomplished prior to the issuance of any new water rights.

- the public interest

The public interest provides for consideration of a variety of factors in addition to those described above. For example, Washington's relationship with the other political entities working on restoring the health of the Columbia River and its tributaries is a crucial consideration. As described above, numerous federal and state agencies, Indian tribes and public interest organizations are working at tremendous effort and expense to restore the health of salmon populations and river function in the Columbia basin. It is critical that Washington work with these entities to find mutually acceptable solutions. Allocation of water rights must be coordinated with these efforts.

The effect of potential new water rights on water quality and fish habitat are fundamental public interest considerations. Salmonids require cold, clean flowing water and habitat restoration efforts are considered crucial to restoration of the endangered species. Preservation and enhancement of instream flows are an essential component of these efforts.

The public interest test also requires consideration of cumulative effects. As noted above, the contribution of water from tributary rivers and aquifers must be considered in the water availability calculus. Analysis of the legal commitment of water to existing uses is a component of the test for impairment of existing rights. Beyond these considerations, however, the state must also consider future uses of water to determine the cumulative impact of water consumption on the resource. Coming decades will only bring greater demand for both instream and out-of-stream use of the waters of the Columbia. What is the best possible use, given both economic and ecological considerations?

In addition, three new initiatives may affect river management. The ground water management planning effort proposed as a substitute for sole source aquifer designation of the Columbia Plateau aquifers will necessarily have to examine and grapple with water supply issues. Moreover, the push to protect the Hanford Reach as a Wild and Scenic River carries great import for new appropriations of water from the river. Finally, the final environmental impact statement for the state's proposed Wild Salmonid Policy identifies the Columbia basin as the most altered river ecosystem in the state. Major efforts aimed at habitat restoration, including instream flow protection, will be required to meet the state's salmon restoration goals. As the state undertakes a water rights analysis for these applications, coordination with these efforts is essential to a unified and effective policy for protection of the Columbia River ecosystem.

Conclusion

Until more information is available on the impact of withdrawals from the Columbia Basin and on the flow/quality requirements of salmon, any permits for new water rights should be denied.

Yours very truly,

Rachael Paschal /EB

Rachael Paschal

CC:

<u>Appl. No.</u>	<u>Name</u>
G3-29138	Pleasant Ridge Orchards
G3-29502	H/J Development Group
G3-29663	Tipett

<u>Appl. No.</u>	<u>Name</u>
G3-29957	Pasco, City of Alberts
G3-29993	Pasco School District No. 1
G3-30000	Bates
G3-30025	Meacher
G3-29198	Carroll
G3-29688	Brown
G3-29447	Spangelo
G3-29510	DS Enterprises Inc.
G3-29521	Spencer-Livingston
G3-29604	Browning
G3-29645	Brougher Ranch Inc.
G3-29685	Spencer
G3-30008	McLean
G3-29522	Lecture
G3-29669	Riverwood Water Association
G3-29972	Marcus, Town of
S3-29151	JR Simplot Company Conrad
S3-29154	Sagemoor Farms Hanson
S3-29504	Faust
S3-29541	Rugloski
S3-29481	KVA Resources Inc.
S3-29349	Vultee

✂
Please detach and return with your remittance.

Paid 9/8/94 Check # 804

Payment due:

Application number:

March 11, 1994

Modulee
S3-29349

Please mail to:

Department of Ecology
Water Right Application Surcharge
PO BOX 5128
LACEY WA 98503-0210

For agency use only: 001-02-85-11

Region: ERO

Please write your application number on your check or money order. Do not mail cash.
Make checks payable to the Department of Ecology.

P 371 318 768



COPY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

N. 4601 Monroe, Suite 202 • Spokane, Washington 99205-1295 • (509) 456-2926

May 25, 1993

Peter G. Vultee
N. 7012 Colton #G107
Spokane, WA 99208

Dear Mr. Vultee:

Re: Surface Water Application No. S3-29349

You probably have heard that the National Marine Fisheries Service (NMFS) has listed Snake River Sockeye Salmon as an endangered species under the Federal Endangered Species Act. This federal action means that major changes are in store for how water and related natural resources will be managed in the future in the Snake and Columbia River Basins. I would like to brief you on the status of water right applications in light of these developments.

First, let me update you on several other related activities. You may not know that NMFS is considering a proposal to list two other runs of Snake River Chinook Salmon as endangered species. Also, fisheries experts have identified more than 100 declining anadromous fish runs in Washington.

A strong effort is being made to develop a regional solution. Last December, at the request of the governors of the Columbia Basin states, the Northwest Power Planning Council amended the basin's Fish and Wildlife Program. Past-Governor Booth Gardner strongly endorsed this regional plan.

The fish recovery plan calls on states to take whatever steps are necessary in water management to protect salmon and steelhead. To do this and at the same time meet our obligation to allow responsible use of the state's water, Department of Ecology has made some extremely difficult decisions on processing water rights during the regional discussions.

Vultee

~~Thomas C. Parkman~~
~~Page 2~~
~~February 1, 1993~~

These decisions will have at least a temporary effect on your application. ~~You have applied for water rights from Asotin Creek, tributary to the Snake River.~~ Prior to taking final action on this application Department of Ecology must determine whether sufficient water is available to satisfy both new water rights and the instream flow needs of fish.

Following this review, Department of Ecology will continue processing applications normally for streams with healthy fish stocks, available water, and adequate instream flow. For streams with weak stocks, further study will be done to determine if low flows are a contributing cause. If so, additional detailed studies may be necessary before water right decisions can be made.

I hope this letter answers some questions that you may have regarding your water right application. I want to assure you that Ecology will make every effort to expedite action on your application. I apologize for delays that are necessary to provide a well founded decision.

At this time we do not have a firm date when this issue will be resolved. Due to the complexity of the matter it may take 2 to 3 years before we can make a decision on your application.

Sincerely,

Cindy A. Christian

Cindy A. Christian
Allocation and Management Unit
Water Resources Program

CAC:aal

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
NOTICE OF APPLICATION
TO APPROPRIATE PUBLIC
WATERS

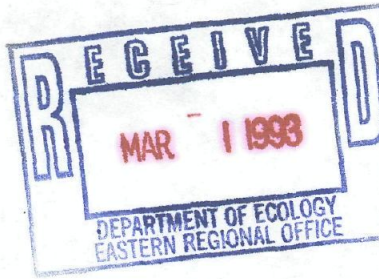
TAKE NOTICE:

That Peter G. Vultee of Spokane, Washington, on December 11, 1992, under Application No. S3-29349 filed for permit to appropriate public waters, subject to existing rights, from Lake Roosevelt (Columbia River) tributary to the Pacific Ocean in the amount of 0.25 cubic feet per second, each year, for seasonal irrigation of 5 acres and a greenhouse. The source of the proposed appropriation is located within the NW1/4NW1/4 of Section 16, Township 35 N., Range 37 E. W. M., in Ferry County.

Protests or objections to approval of this application must include a detailed statement of the basis for objections; protests must be accompanied by a two dollar (\$2.00) recording fee and filed with the Department of Ecology, at the address shown below, within thirty (30) days from February 25, 1993.

State of Washington
Department of Ecology
N. 4601 Monroe, Suite 202
Spokane, WA 99205-1295

2/18-25p



OK-MM
RAA ex-3-27-93

AFFIDAVIT OF PUBLICATION

STATE OF WASHINGTON }
COUNTY OF FERRY }

RICHARD GRAHAM, being first duly sworn on oath deposes and says that he is the publisher of the REPUBLIC NEWS-MINER, a weekly newspaper. That said newspaper is a legal newspaper and is now and has been for more than six months prior to the date of the publication hereinafter referred to, published in the English language continually as a weekly newspaper in Ferry County, Washington, and is now and was during all of said time printed in an office maintained at the aforesaid place of publication of said newspaper. That the said Republic News-Miner was on the 10th day of July, 1941, approved as a legal newspaper by the Superior Court of said Ferry County. That the annexed is a true copy of

Water Right as it
was published in regular issue and not in supplement form, of said newspaper for

a period of Two consecutive weeks, commencing on the

18 day of Feb 1993 and ending on the

25 day of Feb 1993, both dates inclusive, and
that said newspaper was regularly distributed to its subscribers during all of said
period. That the full amount of the fee charged for the foregoing publication is the

sum of \$ 38.00, which amount has been paid in full.

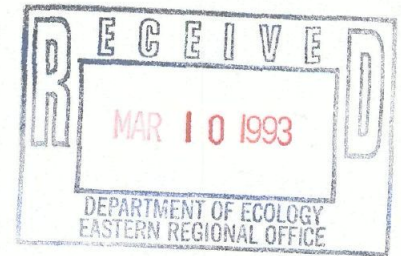
Subscribed and sworn to before me this 26th day of Feb, 1993

[Signature]
Notary Public in and for the State of Washington
Residing at Republic

Robert Turner
Acting Director

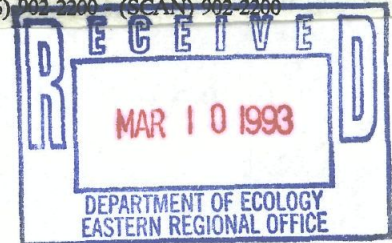


STATE OF WASHINGTON
DEPARTMENT OF FISHERIES



1111 Washington Street S.E. - Post Office Box 43135 - Olympia, Washington 98504-3135 * (206) 902-2200 (SCAN) 902-2200

March 5, 1993



Washington Department of Ecology
Water Resources Program
North 4601 Monroe Street, Suite 100
Spokane, Washington 99205

SUBJECT: Water Right Applications: S329291 and S329349
Columbia River, WRIA 58.0001

Dear Water Resources:

The Washington Department of Fisheries (WDF) has reviewed the above water right applications and offer the following comments for your consideration.

Salmon and steelhead stocks in the Columbia River Basin are severely depressed. Estimates of annual adult salmon and steelhead runs prior to the development of the basin in the mid-19th century range from 10 to 16 million fish. Currently, Snake River sockeye salmon are listed as endangered and Snake River spring/summer and fall chinook are listed as threatened under the Endangered Species Act (ESA).

Inadequate flows during the juvenile outmigration period remains a primary factor limiting current salmon recovery plans. A positive relationship has been documented between flows and survival of juvenile salmonids at all life stages. Pre-emergent and emergent stages are highly susceptible to water level fluctuations. Smolt outmigration depends on adequate flow to "flush" fish to the open ocean. Research on the Columbia River system has shown that the timely migration of juvenile salmonids is closely related to river flows and fish condition during the migratory period. Dams can delay downstream travel so fish are exposed longer to predators, disease, and other mortality factors. In addition, seawater readiness in the fish is present only for a limited time and if they do not reach the estuary in the appropriate time window they are unable to adapt to salt water. Given the constraints of the system, adequate river flows mitigate some of these impacts.

Water Resources
Page 2
March 5, 1993

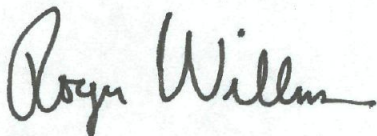
While the subject applications appear to be small requests (0.22 and 0.25 cfs, respectively), the cumulative impacts of such withdrawals have resulted in the continued degradation of Columbia River instream flows. As previously mentioned impacts are worst during migration periods for juvenile salmonids (generally April through August). Both referenced applications would divert waters during that critical period.

It is our understanding that currently the Instream Resource Protection Program (Chapter 173-563 WAC) for the main stem Columbia River in Washington state has been amended to place a hold on all mainstem Columbia and Snake River water right applications received after December 20, 1991, until June 30, 1994, so enough data can be collected to determine if additional water is available for appropriation while still providing enough instream flow for fishery needs. The applications referenced above have priority dates of September 21, 1992 and December 11, 1992, and therefore should be held until a final decision is made.

Based on the current policy and the status of our Columbia River salmon stocks the WDF cannot approve the subject applications. The Washington Department of Wildlife should be contacted for additional comment on these applications.

Thank you for this opportunity to comment.

Sincerely,



Roger A. Willms
Habitat Management Division
Kennewick Field Office

RW

cc: WDW - Spokane



N. 4601 Monroe, Suite 202 • Spokane, Washington 99205-1295 • (509) 456-2926

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

NOTICE OF APPLICATION TO APPROPRIATE PUBLIC WATERS

TAKE NOTICE:

That Peter G. Vultee of Spokane, Washington, on December 11, 1992, under Application No. S3-29349 filed for permit to appropriate public waters, subject to existing rights, from Lake Roosevelt (Columbia River) tributary to the Pacific Ocean in the amount of 0.25 cubic feet per second, each year, for seasonal irrigation of 5 acres and a greenhouse. The source of the proposed appropriation is located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, Township 35 N., Range 37 E. W. M., in Ferry County.

Protests or objections to approval of this application must include a detailed statement of the basis for objections; protests must be accompanied by a two dollar (\$2.00) recording fee and filed with the Department of Ecology, at the address shown below, within thirty (30) days from

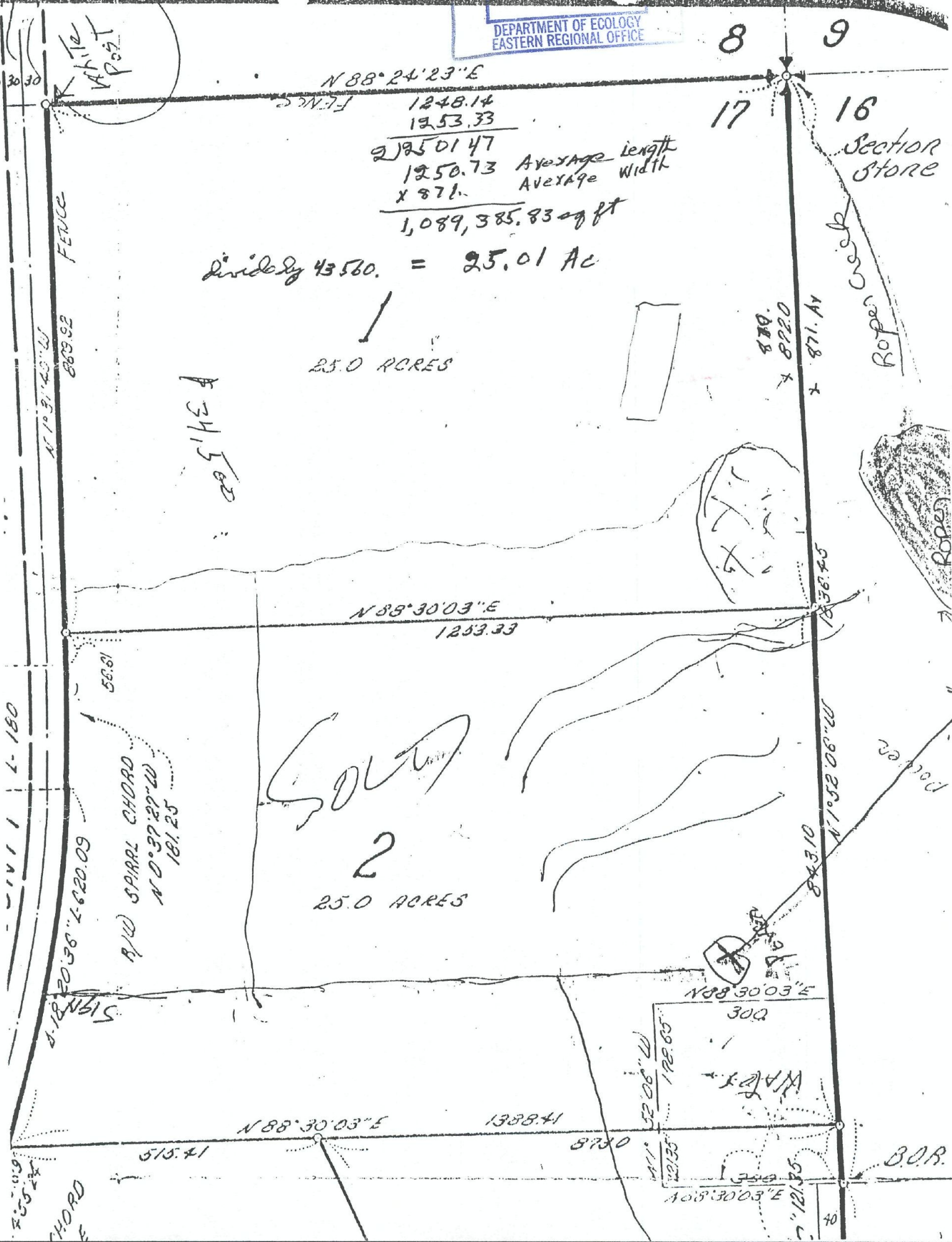
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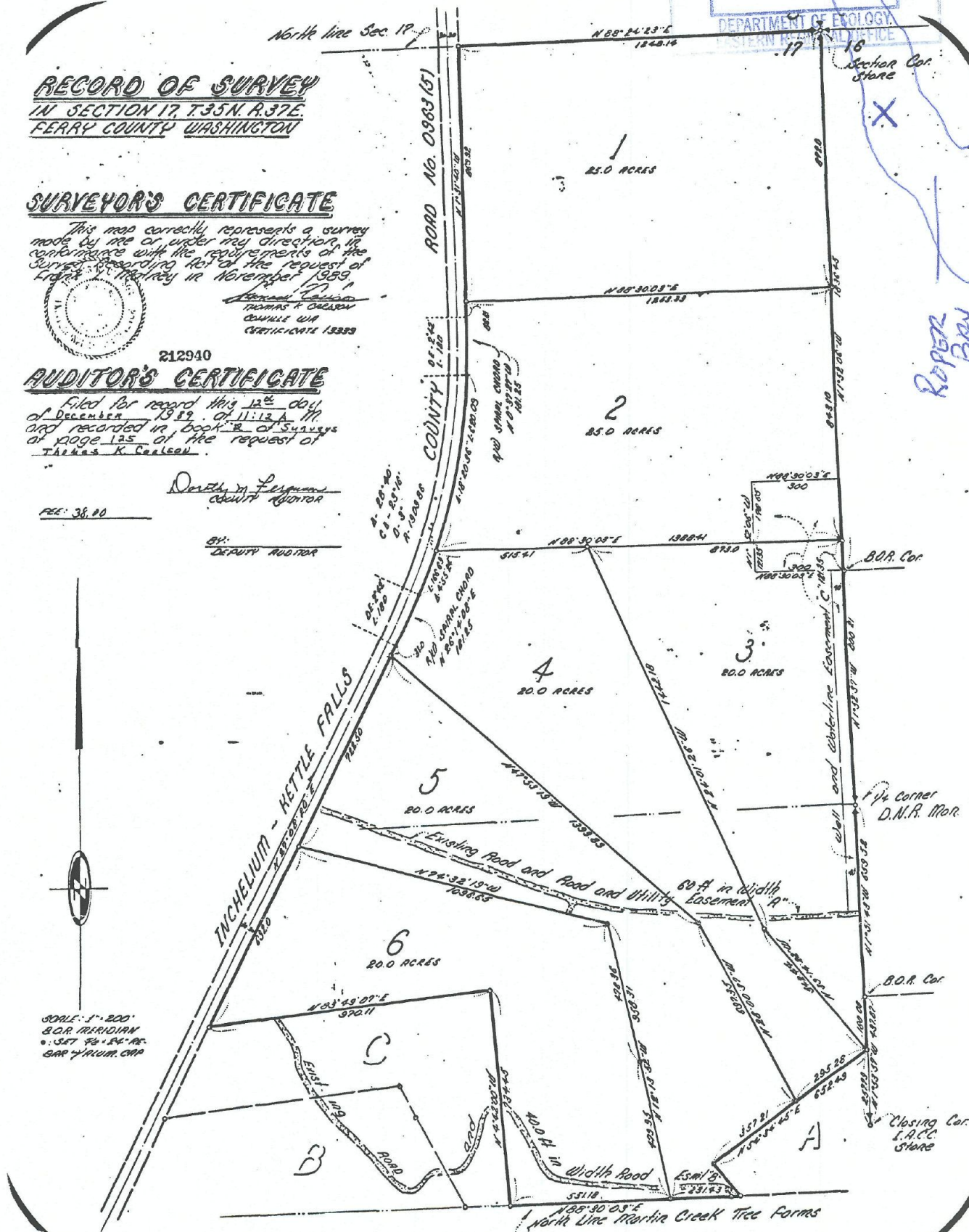
NOTICE

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DEPARTMENT OF ECOLOGY
EASTERN REGIONAL OFFICE

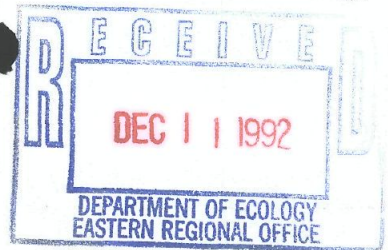


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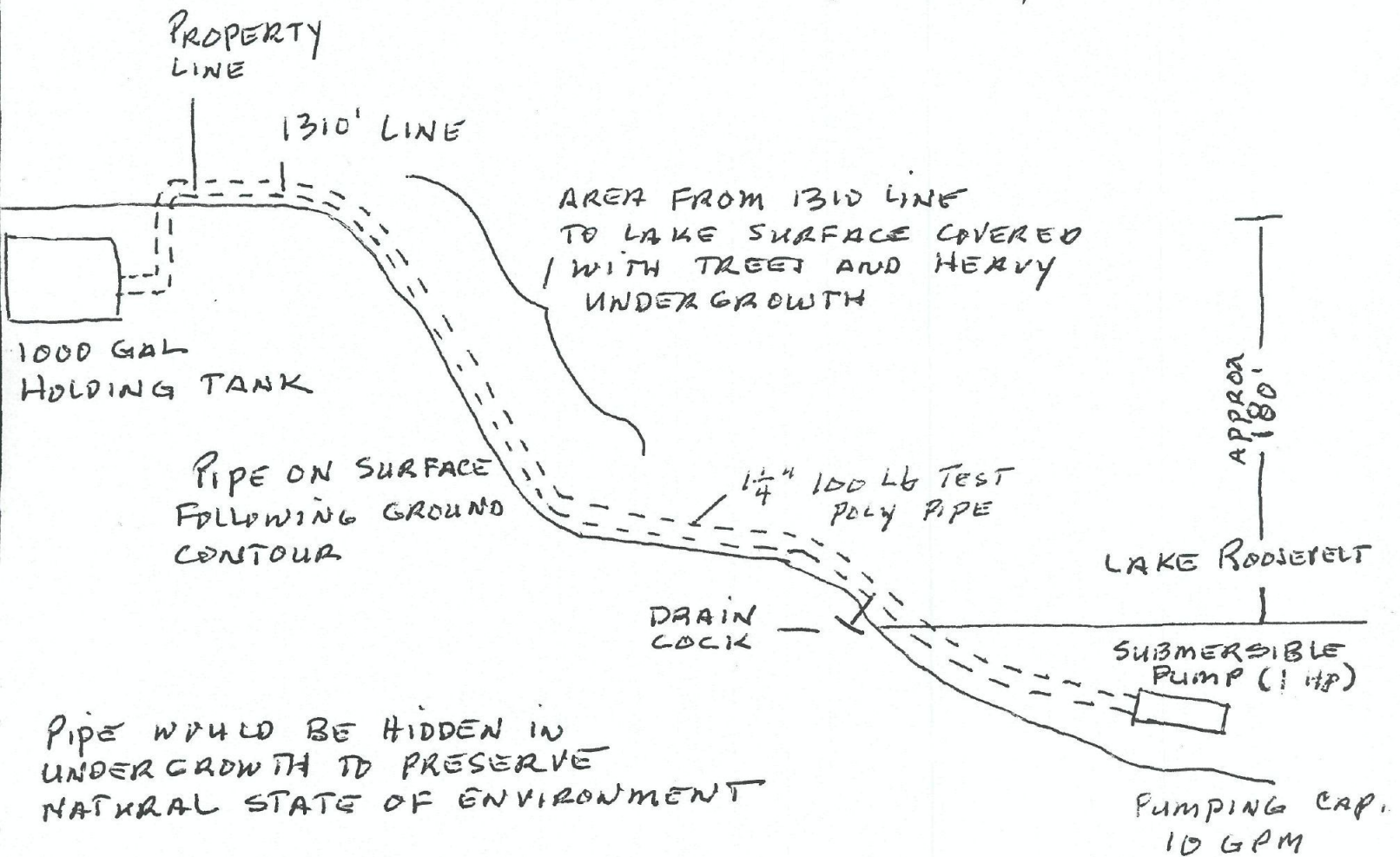
LAKE ROOSEVELT

S329349



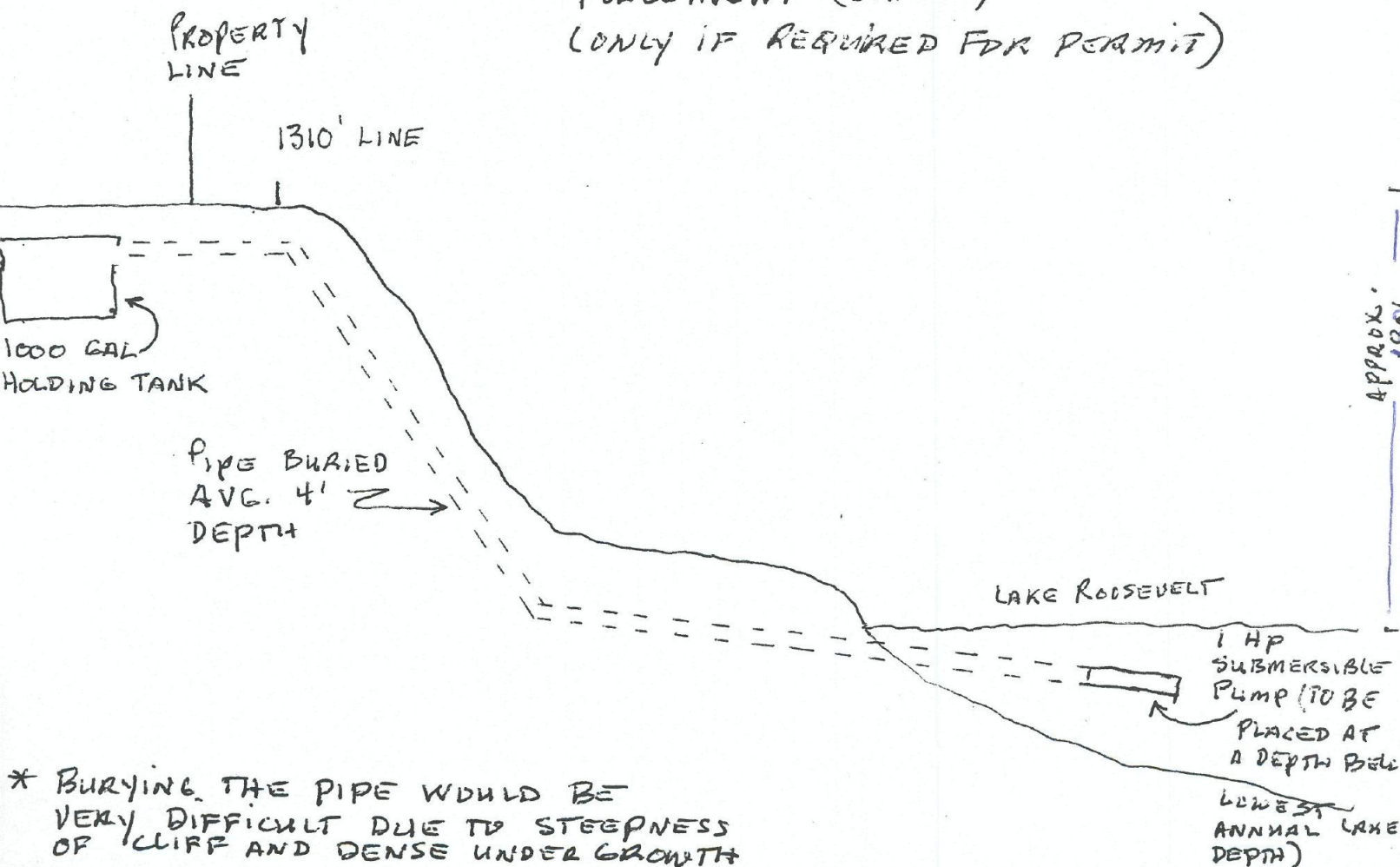
PLAN (A)

PREFERRED LINE
PLACEMENT (SURFACE)



PLAN (B)

ALTERNATE LINE
PLACEMENT (BURIED)*
(ONLY IF REQUIRED FOR PERMIT)



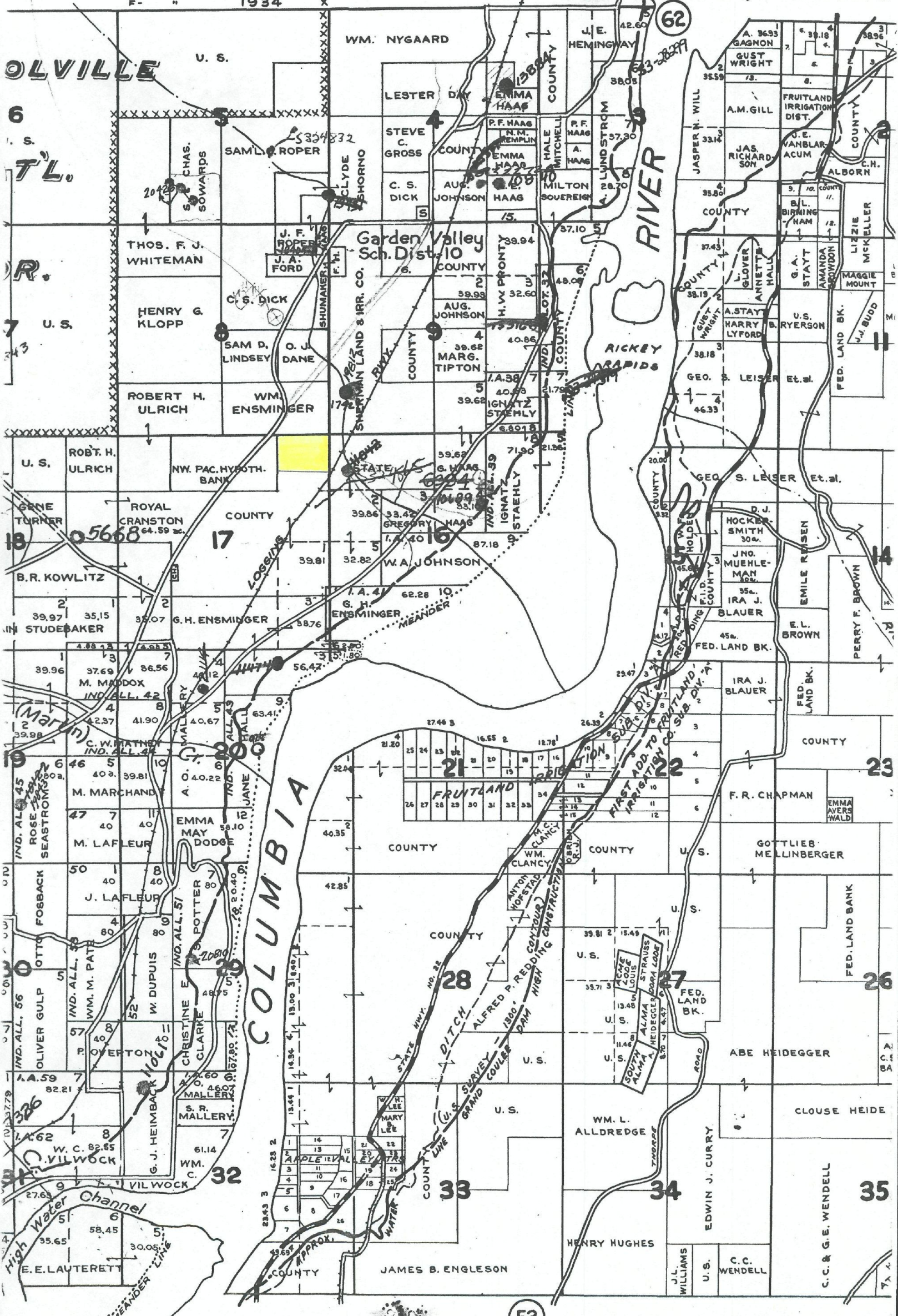
25 min
1906 Vested Right
J.F. Roper
Ferry Co. File #
18131

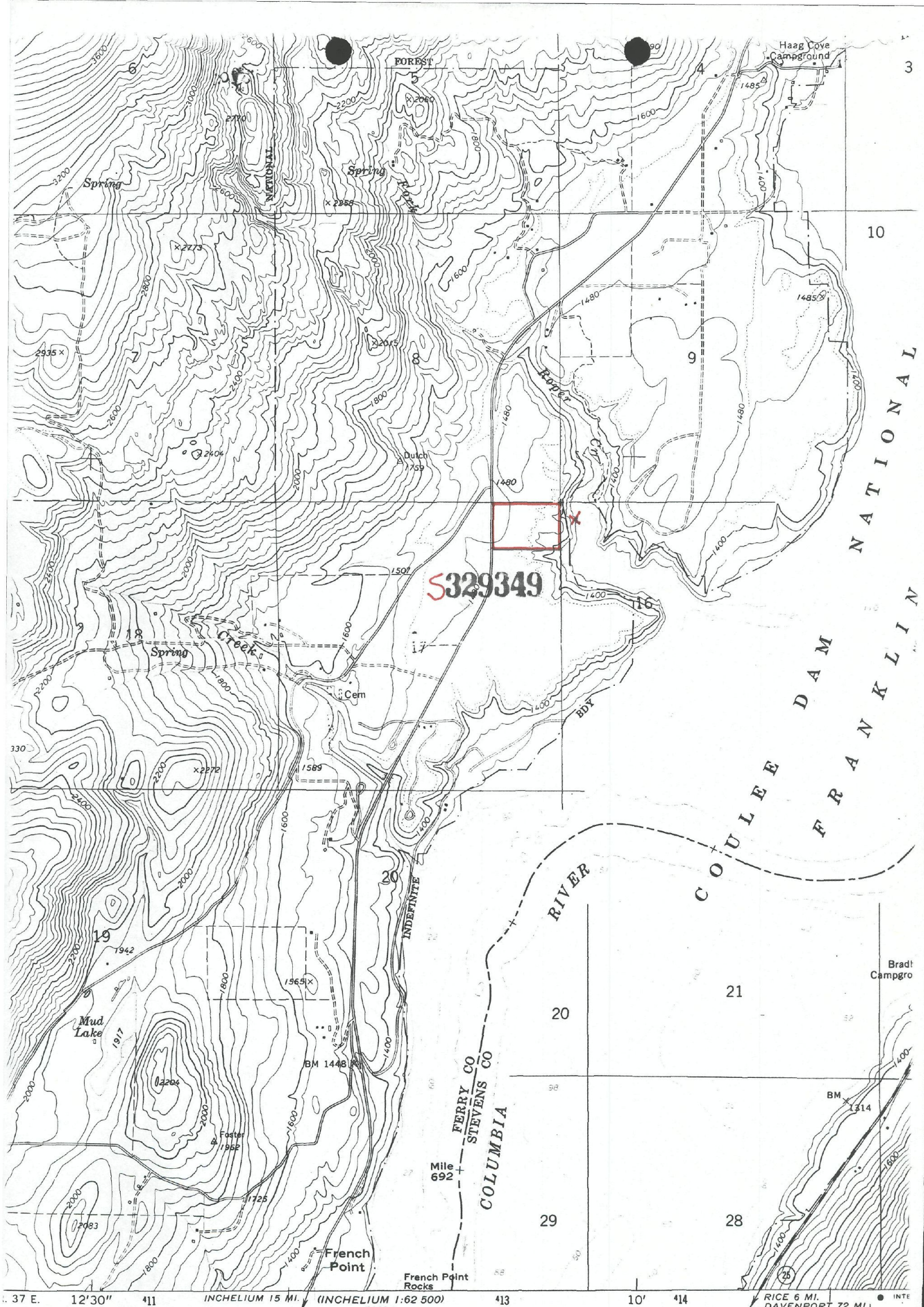
TOWNSHIP 35 N., RANGE 3

STEVENS COUNTY, WASHINGTON
& FERRY COUNTY, WASHINGTON

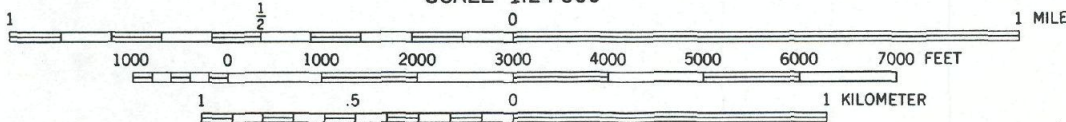
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S- DATED 1933
F- " 1934





SCALE 1:24 000



CONTOUR INTERVAL 40 FEET

DOTTED LINES REPRESENT 20-FOOT CONTOURS

NATIONAL GEODETIC VERTICAL DATUM OF 1929

DEPTH CURVES AND SOUNDINGS IN FEET—DATUM IS NORMAL POOL ELEVATION 1289 FEET

Primary highway
hard surface
Secondary highw
hard surface



QUADRANGLE LOCATION

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092